

CIVIL RULES: APPENDIXES

APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION

See CR 37

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JONES ACTOR,)	
)	No. C01-9999L
)	
Plaintiff,)	
v.)	CR 37 SUBMISSION REGARDING
)	REQUEST FOR PRODUCTION
BIG ROSE FLOWER)	NO. 17
COMPANY,)	NOTE ON MOTION CALENDAR:
Defendant.)	[insert date]

I. MOVING PARTY'S INTRODUCTORY STATEMENT.

Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff Jones Actor is seeking more than \$2.5 million in damages, claiming that at the time he purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by Big Rose for growing flowers would be unable to produce a suitable crop in 2000. It is claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities Exchange Act and the Washington Securities Act.

These allegations are untrue. Further, Actor is a director of a company that is also in the flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems caused by the 1999 drought, which affected all flower producing companies in the Northwest.

II. RESPONDING PARTY'S STATEMENT.

Jones Actor purchased nearly \$3 million of stock in Big Rose--stock that is worth less than \$500,000 today. He purchased this substantial amount of stock because of glowing reports from Big Rose regarding its prospects for future profits.

However, things were not as rosy as they seemed. All of Big Rose's land holdings used to produce flowers were not only severely parched by the 1999 drought, but also contaminated with chemicals because of a mistake in choosing fertilizers. Big Rose knew that it was unlikely that these chemicals could be removed from the soil in time to produce a profitable crop for 2000. When this information was finally disclosed to the public, Big Rose stock plummeted in value.

III. DISPUTED DISCOVERY REQUESTS.

REQUEST FOR PRODUCTION 17: Please produce all income tax returns for 1995 through 2000 for the Fleurs 'R' Nous Company.

RESPONSE: Actor objects to this request on the grounds that it calls for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the information sought is confidential.

Moving Party's Argument:

Actor claims that he was deceived by the alleged omissions of information from Big Rose's public statements. To defend against this claim, Big Rose will show that Actor is a sophisticated individual, who was aware of the risks in the flower business and who also had information obtained by Fleurs 'R' Nous regarding the problems that Big Rose was having with its land at the time he was buying Big Rose stock. Defendants in security cases are properly allowed to obtain tax returns, because they help show the plaintiff's degree of sophistication and understanding of the risks of investment. *Davis v. Big Co.*, 123 F.4 [FNth] 777, 788 (9 [FNth] Cir. 1999). Further, the tax return may identify individuals with knowledge of Actor's understanding of the industry.

Responding Party's Response.

While it is true that tax returns may be produced to show the degree of sophistication of a securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but rather the tax returns for a company in which he is a director and part owner. That company is not a party to these proceedings. Non-parties should not be forced to produce their tax returns absent very compelling reasons. *Westminster v. Abbey*, 867 F.5 [FNth] 309, 312 (9 [FNth] Cir. 1999). No compelling reasons have been presented. Fleurs 'R' Nous is not a publicly traded company, and its financial and other information is maintained as confidential. It is a competitor of Big Rose, and disclosure of this information through discovery could be harmful.

Moving Party's Reply.

Actor's supposed concern about Fleurs 'R' Nous' confidential information can be addressed through a protective order. Big Rose will agree not to disclose this information to persons other than counsel and experts absent agreement of the parties or further order of the Court. While Fleurs 'R' Nous is not a party, its tax returns may contain information about money spent addressing the drought problem that was common to several floral companies. Thus, the information could lead to the discovery of admissible evidence.

CERTIFICATION

I certify that the full response by the responding party has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with CR 37(a).

DATED: June 1, 2001.

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CR 37 SUBMISSION
(C01-9999L)

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[Effective January 1, 2002.]